

In the United States District Court
for the
Eastern District of Pennsylvania

Rajan Patel vs. ECFMG (Educational Commission For Foreign Medical Graduates)

Case Number: 2:21-cv-00546-NIQA

Date: 8/26/2021

Motion for Leave to File an Amended Complaint

Basic Reason for this Motion for Leave to File an Amended Complaint:

I, the pro-se plaintiff of this case, wish to amend my complaint to reflect the most accurate level of details and assertions. In the former complaint, there are details and statements that did not reflect what actually occurred to a degree of accuracy that I feel is important to maintain throughout this case. I ask the Honorable Judge to grant this motion and to accept the new and amended complaint that is attached to this document as an exhibit.

Sincerely,

Rajan Patel
/s/ (electronically signed)

Exhibit A- The Amended Complaint (Page 1 of Exhibit A)

This complaint and exhibit replaces page six of the case documents, which is titled “Statement of Claim and Relief.”

Amended Statement of Claim and Relief:

The ECFMG (Educational Commission for Foreign Medical Graduates) gives students seven years to complete the USMLE exams in order to become ECFMG certified. I am such a student that has one more exam left to take and pass in order to be certified by the ECFMG. My seven years were up at the end of June of 2020. Before the Covid-19 Pandemic, we were able to take the exam on almost any day of the year that we wish, as long as we have an active scheduling permit issued by the ECFMG. However, during the timeframe of April-May-June-July 2020, though I had an active scheduling permit to take the exam, I was not able to take my exam because the test centers (called Prometric) were closed; and when they reopened, they required test takers to wear a complete mouth and nose covering (a face mask) for the entire length of the exam (nine full hours). Prometric’s requirement of wearing a mask is reasonable as it is important to protect our communities and societies from the Coronavirus. However, I really am unable to wear a mask for the length of this exam, as my Pulmonologist at Johns Hopkins Medicine, Dr. Holden, has strictly recommended me NOT to wear a mask for that long because wearing a mask puts me in a dangerous situation healthwise, as I have a form of Asthma that causes dangerous levels of shortness of breath when wearing a mask for a prolonged time-frame. I have all medical documentation required to show evidence of these statements, and I would present such evidence during the appropriate phases of this civil action. My Pulmonologist confers that wearing a mask for extended periods of time significantly affects my safety, wellbeing and ability to breathe normally. I have asked the Prometric Test Centers if they can provide me with an accommodation (ADA- Reasonable accommodation) whereby I am allowed to take the test in a separate room without a mask, or some other way of allowing me to take the exam safely without wearing a mask (as an ADA Reasonable Accommodation due to my disability that is impairing me from take the exam under the normal but new policies with regards to wearing masks). Prometric initially said no and suggested that I should wait until after the pandemic is over and they go back to allowing test takers to take the exam without wearing a mask. Their reason for this was that it would be unreasonable to provide me this accommodation when it can affect the health and safety of thousands of other people. I then explained my situation to Prometric and told them how it is time sensitive for me to take this exam and that my seven years are coming to an end with ECFMG’s Seven Year Rule. Prometric then stated to me that it would allow me to take the exam without wearing a mask (as an accommodation) if I can provide them proof of certainty that ECFMG says that it will waive and extend temporarily, their seven year window for me (because by the time the testing centers were back to near full function capacity of scheduling, booking, and testing, my seven years had

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just passed - June 30 2020). This is a reasonable request by Prometric as they require a compelling reason and proof of that reason (eg. in this case ECFMG's seven years coming to an end for me), in order to provide me with an accommodation that could put their clients, test-takers, and employees at a health risk. I then immediately approached ECFMG, asking them to provide me in writing that they would indeed extend my seven years, so that I can take the exam with the accommodation that I need at Prometric. ECFMG finally responded in January 2021 stating that it would not provide me this type of letter nor would it consider providing me an extension of the seven years until I take my remaining exam and pass it. ECFMG also stated that it might finally make me retake my first exam that is out of the seven year time frame in order to deem me eligible for certification. Note that making me retake an exam that I worked so hard to pass in the first place, along with the fact that I would have been done (with a passing result) with this last exam as well within the seven year window if the pandemic did not occur, test centers did not close, and if masks were not required to be worn, is utterly unjust. This is and should be a valid reason to allow an exception and extension of the seven year window by ECFMG. However, ECFMG refused to provide me with this extension and said it would only consider it AFTER I finish and pass the remaining exam, despite it knowing that I can not physically take or pass the exam until I am granted this disability related accommodation. It would be a reasonable accommodation for ECFMG to grant an extension PRIOR to me finishing the exam, instead of waiting until AFTER I am finished with the exam (as it is does under its normal protocol), especially since it is really needed in this situation. A reasonable accommodation is a change made to established normal protocols and policies in order to provide accessibility and fairness to a person who is disabled, where the disability is impairing the person's accessibility/fairness. My medical condition is indeed covered under the ADA as a recognized disability. ECFMG also stated several times in communication with me that they "encourage me to take the exam under current protocols and standards at the testing center (implying I wear a mask), instead of me trying to ask ECFMG of these types of requests." This is almost a taunt to a person who is disabled/has a medical condition, who truly can not take the exam due to health reasons related to wearing a mask. Given this unprecedented nature of the pandemic, educational organizations are to grant accommodations when needed and appropriate (both under the ADA law and other Pandemic related laws and executive orders). In this case it is appropriate and necessary for the ECFMG to extend my seven year window, as it is a procedural requirement by the test center in order for it to allow me to take the exam with the disability related reasonable accommodation that I need (eg. not wearing a mask). ECFMG and Prometric work together to allow students to take the USMLE exams. Prometric did its part in providing a reasonable guideline to receiving an accommodation, but ECFMG is not doing its part in providing a definitive communication and statement that it will provide me an extension of the seven years. It failing to provide this statement to me now is causing me to be unable to take the USMLE exam at the Prometric center, in turn directly hindering my progress in my career as a physician. Without taking the USMLE exams and becoming ECFMG certified, there absolutely no way one can even begin training as a physician. This is similar to the BAR exam that lawyers have to pass in order to be licensed by the state as an Attorney. I need to provide Prometric the compelling reason that I have an upcoming time

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deadline to pass this last exam in order to be ECFMG certified. ECFMG needs to give me such a deadline so that I can provide it to Prometric. If it does not, I will be unable to receive the accommodation from Prometric (to take the test without wearing a mask). ECFMG is failing to provide me with such a deadline (as part of an accommodation request I made to the ECFMG). ECFMG states that providing me with such a deadline would mean it agrees to provide me an extension to the seven year window prior to me passing the last exam, which it does not agree to do. This failure to provide me this new deadline as a reasonable accommodation is ECFMG's breach of law and is the reason I am suffering the loss of not being able to take the last USMLE exam and hence not being able to continue on my path of becoming a physician. It is wasting valuable time and the longer we wait, the more difficult it will be for me to explain this time gap to future training programs and employers. This field is competitive as it is and this is making my competition and difficulty even steeper (for a completely unfair/unjust reason). These are real losses and damages that I am suffering as a result of ECFMG's denial and refusal to accommodate. A fair relief would involve paying me back the recent exam fee I had to pay to extend my eligibility period, AND more importantly, providing me with this much needed "new deadline" and "extension" that I need to show Prometric, in order for me to get the accommodation from Prometric to take the exam without a mask. ECFMG extended all test takers' scheduling permits (during the pandemic) by 18 months, which was unprecedented, yet it can not agree to extend my seven year window, which seems quite unjust and unreasonable, especially since this is needed as an accommodation in order for me to access the exam. This accommodation will allow me to take and pass my exam before the new deadline is up and hence be ECFMG certified in a timely manner, and then be able to progress in my career as a physician, seeking training programs and employment. If I do not receive this accommodation from ECFMG, I will not be able to be ECFMG certified under the current situation with the pandemic and hence will not be able to embark on my career as a physician, for which I have worked so hard to reach this final stage. Given the nature of this issue, and given the fact that I have paid ECFMG thousands of dollars in fees already, it is ECFMG's responsibility to make adjustments to their policy when necessary and appropriate under law (eg. ADA law). In the ADA Title III: Public Accommodations section, it states: "Courses and examinations related to professional, educational, or trade-related applications, licensing, certifications, or credentialing must be provided in a place and manner accessible to people with disabilities, or alternative accessible arrangements must be offered." In this case, it is absolutely appropriate for ECFMG to NOW grant me a definitive written statement of extension of the seven years, and a new extended deadline so that I can take my exam. All other students under normal circumstances received their seven full years if they wished, but I did not, as during the last several months/weeks of my seven years, ALL Prometric test centers were closed due to the pandemic. Hence extending the seven years for people like me, is warranted and the only fair way to compensate for the lost time. Furthermore, due to my medical condition, I am unable to test until the test center allows me to take the exam without a mask, and currently, they will only do that if they have a compelling written statement from ECFMG establishing a new reasonable upcoming deadline by which I need to take the exam in order to meet the ECFMG certification needs (eg. seven year rule). ECFMG's refusal to do this and them adamantly sticking to their current notion that they provide considerations of extension only AFTER all exams have been

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passed, is essentially them not providing me with the reasonable accommodation that I need to be able to take and access this exam, and thus is their breach of the ADA law, among other laws. ECFMG's current policy in place hinders my accessibility to this USMLE exam, as I am unable to take the exam and pass it BEFORE it grants me an extension of the seven year window. I am physically unable to do so, due to a physician disability mentioned above. Hence, I need ECFMG to provide a reasonable accommodation so that I can access this exam. ECFMG has refused to provide such reasonable accommodation that is required by ADA law and perhaps other laws.